

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing
5 Section 17-56 as follows:

6 (720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

7 Sec. 17-56. Financial exploitation of an elderly person or
8 a person with a disability.

9 (a) A person commits financial exploitation of an elderly
10 person or a person with a disability when he or she stands in a
11 position of trust or confidence with the elderly person or a
12 person with a disability and he or she knowingly and by
13 deception or intimidation obtains control over the property of
14 an elderly person or a person with a disability or illegally
15 uses the assets or resources of an elderly person or a person
16 with a disability.

17 (b) Sentence. Financial exploitation of an elderly person
18 or a person with a disability is: (1) a Class 4 felony if the
19 value of the property is \$300 or less, (2) a Class 3 felony if
20 the value of the property is more than \$300 but less than
21 \$5,000, (3) a Class 2 felony if the value of the property is
22 \$5,000 or more but less than \$50,000, and (4) a Class 1 felony
23 if the value of the property is \$50,000 or more or if the

1 elderly person is over 70 years of age and the value of the
2 property is \$15,000 or more or if the elderly person is 80
3 years of age or older and the value of the property is \$5,000
4 or more.

5 (c) For purposes of this Section:

6 (1) "Elderly person" means a person 60 years of age or
7 older.

8 (2) "Person with a disability" means a person who
9 suffers from a physical or mental impairment resulting from
10 disease, injury, functional disorder or congenital
11 condition that impairs the individual's mental or physical
12 ability to independently manage his or her property or
13 financial resources, or both.

14 (3) "Intimidation" means the communication to an
15 elderly person or a person with a disability that he or she
16 shall be deprived of food and nutrition, shelter,
17 prescribed medication or medical care and treatment or
18 conduct as provided in Section 12-6 of this Code.

19 (4) "Deception" means, in addition to its meaning as
20 defined in Section 15-4 of this Code, a misrepresentation
21 or concealment of material fact relating to the terms of a
22 contract or agreement entered into with the elderly person
23 or person with a disability or to the existing or
24 pre-existing condition of any of the property involved in
25 such contract or agreement; or the use or employment of any
26 misrepresentation, false pretense or false promise in

1 order to induce, encourage or solicit the elderly person or
2 person with a disability to enter into a contract or
3 agreement.

4 (5) "Financial abuse" means:

5 (A) wrongfully taking or appropriating money or
6 property of an elderly person or person with a
7 disability, without regard to whether the person
8 taking or appropriating the money or property has a
9 fiduciary relationship with the elderly person or a
10 person with a disability; or

11 (B) when an elderly person or a person with a
12 disability requests that another person transfer to
13 the elderly person or a person with a disability any
14 money or property that the other person holds or
15 controls and that belongs to or is held in express
16 trust, constructive trust, or resulting trust for the
17 elderly person or a person with a disability, and the
18 other person, without good cause, either continues to
19 hold the money or property or fails to take reasonable
20 steps to make the money or property readily available
21 to the elderly person or a person with a disability
22 when:

23 (i) the ownership or control of the money or
24 property was acquired in whole or in part by the
25 other person or someone acting in concert with the
26 other person from the elderly person or a person

1 with a disability; and

2 (ii) the other person acts in bad faith, or
3 knew or should have known of the right of the
4 elderly person or a person with a disability to
5 have the money or property transferred as
6 requested or otherwise made available to the
7 elderly person or a person with a disability.

8 A transfer of money or property that is made for the
9 purpose of qualifying an elderly person or a person with a
10 disability for Medicaid benefits or for any other State or
11 federal assistance program, or the holding and exercise of
12 control over money or property after the transfer, does not
13 constitute a wrongful taking or appropriation under
14 subparagraph (A) of this paragraph (5) or the holding of
15 money or property without good cause for the purposes of
16 subparagraph (B) of this paragraph (5).

17 (6) "Physical abuse" means any of the following acts
18 committed against an elderly person or a person with a
19 disability:

20 (A) assault;

21 (B) battery;

22 (C) aggravated assault;

23 (D) aggravated battery;

24 (E) criminal sexual assault;

25 (F) aggravated criminal sexual assault;

26 (G) criminal sexual abuse;

- 1 (H) aggravated criminal sexual abuse;
2 (I) intimidation; or
3 (J) criminal abuse or neglect of an elderly person
4 or person with a disability.

5 The illegal use of the assets or resources of an elderly
6 person or a person with a disability includes, but is not
7 limited to, the misappropriation of those assets or resources
8 by undue influence, breach of a fiduciary relationship, fraud,
9 deception, extortion, or use of the assets or resources
10 contrary to law.

11 A person stands in a position of trust and confidence with
12 an elderly person or person with a disability when he (i) is a
13 parent, spouse, adult child or other relative by blood or
14 marriage of the elderly person or person with a disability,
15 (ii) is a joint tenant or tenant in common with the elderly
16 person or person with a disability, (iii) has a legal or
17 fiduciary relationship with the elderly person or person with a
18 disability, (iv) is a financial planning or investment
19 professional, or (v) is a paid or unpaid caregiver for the
20 elderly person or person with a disability.

21 (d) Limitations. Nothing in this Section shall be construed
22 to limit the remedies available to the victim under the
23 Illinois Domestic Violence Act of 1986.

24 (e) Good faith efforts. Nothing in this Section shall be
25 construed to impose criminal liability on a person who has made
26 a good faith effort to assist the elderly person or person with

1 a disability in the management of his or her property, but
2 through no fault of his or her own has been unable to provide
3 such assistance.

4 (f) Not a defense. It shall not be a defense to financial
5 exploitation of an elderly person or person with a disability
6 that the accused reasonably believed that the victim was not an
7 elderly person or person with a disability.

8 (g) Civil Liability.

9 (1) An elderly person or a person with a disability who
10 suffers injury, damage, or death by reason of physical
11 abuse or financial abuse may bring an action against any
12 person who has caused the physical or financial abuse. The
13 court shall award the following to a plaintiff who prevails
14 in an action under this subsection:

15 (A) an amount equal to 3 times all economic damages
16 resulting from the physical or financial abuse, or
17 \$500, whichever amount is greater;

18 (B) an amount equal to 3 times all non-economic
19 damages resulting from the physical or financial
20 abuse;

21 (C) reasonable attorney's fees incurred by the
22 plaintiff; and

23 (D) reasonable fees for the services of a guardian
24 or guardian ad litem incurred by reason of the
25 litigation of a claim brought under this subsection.

26 (2) An action may be brought under this subsection only

1 by:

2 (A) an elderly person or a person with a
3 disability;

4 (B) a guardian, conservator, or attorney-in-fact
5 for an elderly person or a person with a disability;

6 (C) a personal representative for the estate of a
7 decedent who was an elderly person or a person with a
8 disability at the time the cause of action arose; or

9 (D) a trustee for a trust on behalf of the trustor
10 or the spouse of the trustor who is an elderly person
11 or a person with a disability.

12 (3) An action may be brought under this subsection only
13 for physical abuse or for financial abuse.

14 (4) A person commencing an action under this subsection
15 must serve a copy of the complaint on the Attorney General
16 within 30 days after the action is commenced. ~~A person who~~
17 ~~is charged by information or indictment with the offense of~~
18 ~~financial exploitation of an elderly person or person with~~
19 ~~a disability and who fails or refuses to return the~~
20 ~~victim's property within 60 days following a written demand~~
21 ~~from the victim or the victim's legal representative shall~~
22 ~~be liable to the victim or to the estate of the victim in~~
23 ~~damages of treble the amount of the value of the property~~
24 ~~obtained, plus reasonable attorney fees and court costs.~~
25 ~~The burden of proof that the defendant unlawfully obtained~~
26 ~~the victim's property shall be by a preponderance of the~~

1 ~~evidence. This subsection shall be operative whether or not~~
2 ~~the defendant has been convicted of the offense.~~

3 (h) If a person is charged with financial exploitation of
4 an elderly person or a person with a disability that involves
5 the taking or loss of property valued at more than \$5,000, a
6 prosecuting attorney may file a petition with the circuit court
7 of the county in which the defendant has been charged to freeze
8 the assets of the defendant in an amount equal to but not
9 greater than the alleged value of lost or stolen property in
10 the defendant's pending criminal proceeding for purposes of
11 restitution to the victim. The burden of proof required to
12 freeze the defendant's assets shall be by a preponderance of
13 the evidence.

14 (Source: P.A. 96-1551, eff. 7-1-11; 97-482, eff. 1-1-12;
15 97-865, eff. 1-1-13.)